

Compliance Outlook

Several Federal Changes Will Affect HR Next Year

With 2008 coming to a close, many HR departments are making their compliance lists -- and checking them twice -- to make sure they're covered for this year and prepared for the next.

For 2009, employers must grapple with some major changes in the Family & Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), Mental Health Parity Act (MHPA) and more. While the total impact of these changes on businesses is still unknown, many experts say these changes could drive up costs. Here's a roundup of the major coming changes:

FMLA

The Department of Labor has updated the Act, which now allows family members of injured military personnel to take up to 26 weeks annually to care for them, according to a report in *The New York Times*. The amended rules also affect "light duty" provisions of the Act. Now, when employers move workers to light duty, that time cannot be counted as leave.

While employer and employee groups praised the changes, these moves will create some work for HR departments.

The FMLA medical certification form has been altered, and the employer response form has been split into two documents, explains Ellen E. McLaughlin of Seyfarth Shaw law firm. The changes take effect Jan. 16, 2009.

ADA

New amendments to the ADA, effective
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Prescription Challenges

Specialty Drugs, 'Freebies' Add to Employer Costs

Specialty drugs are a growing cost factor for employer health plans, and many experts say it's a trend that won't falter any time soon.

The cost of specialty drugs in 2007 jumped by 12.3 percent, compared with 6.7 percent for all drugs.

"It's the fastest-growing part of pharmacy spend and medical spend," Steven Russek of Accredo Health Group told *Workforce Management*. "Across health care in general, aside from imaging, it's the largest growth sector . . . and we believe it will trend up."

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Health Reform Update

AHIP Makes a Move; Consensus on Reform Grows

Parties that have long been polarized on the issue of health care reform seem to be moving toward consensus, according to a recent analysis by the *Los Angeles Times*.

The *Times* reports that groups of businesses, hospitals, unions and insurance companies are beginning to agree that some sort of government intervention and universal coverage is necessary to fix the nation's health system. However, it appears these groups largely have agreed to preserve the employer-based system through which most Americans have health insurance.



This shift in thinking was demonstrated by the lobby group America's Health Insurance Plans (AHIP), which helped kill President Clinton's health reform campaign in the early 1990s. Now, AHIP has put forth a proposal of agreeing to accept pre-existing conditions in individual coverage -- as long as the government mandates that all individuals are covered.

However, major divides among the interested parties remain. The biggest stumbling block: whether the millions of uninsured Americans will be funneled into private plans or covered by the government.

While many issues linger in the debate, it's clear that most Americans and health industry leaders expect reform will happen in the next four years.

A survey by the National Association of Children's Hospitals and Related Institutions found that 75 percent of Americans and 79 percent of health industry leaders expect major legislation will be passed in President-elect Barack Obama's first term. ■

Compliance

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Jan. 1, 2009, expand the definition of "disabled," which will significantly change the Act's scope.

"A key nuance for human resource professionals is that under the ADA Amendments Act, workers now will be presumed to meet their initial burden of proving that they have a disability, and the scrutiny will shift from determining whether an individual is 'disabled' to whether the employer covered by the ADA met its legal obligations," said Tina M. Maiolo of the law firm Carr Maloney.

Maiolo suggests HR staff review their job descriptions for possible ADA problems, examine their existing disability policies and beef up on ADA training.

MHPA

Congress has passed legislation that requires health plans to offer equal coverage for mental health and substance abuse as they provide for all medical and surgical benefits. For instance, mental health cannot be subject to separate cost-sharing requirements, and there cannot be separate treatment limitations for substance abuse or mental health.

Steven Wojcik, vice president for public policy for the National Business Group on Health, said these changes potentially could increase health costs for some companies (although those with fewer than 50 employees are exempt). Some employers have avoided having unlimited benefits for these conditions because the risk and cost can be high. Now, however, companies will not be able to limit coverage of these ailments while setting no limits on other medical situations.

Fortunately for these employers, this will not take effect until 2010. ■

Prescription Challenges

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As an example, the University of Michigan saw its cost for specialty drugs, used by 1.6 of people covered by the school's plan, jump by 8 percent in the first half of 2008 from 2007.

These specialty drugs – some of which are thousands of dollars per dose -- generally are used to treat serious and complicated illnesses, such as cancer, multiple sclerosis and rare ailments. However, doctors and health care specialists are finding broader applications for these drugs, which is driving up usage.

Some employers are finding relief by using pharmacy benefit managers (PBMs), which can buy drugs in large quantities, thus reducing cost. PBMs also can help patients better monitor and manage their treatments.

Drugs that cost \$200,000 per patient per year obviously stand to increase health costs. On the other end of the spectrum, however, free drugs also have a negative impact on plans, a recent study finds.

The study, published in the *Southern Medical Journal* and reported in *USA Today*, found that doctors who stopped accepting free samples from drug makers tended to prescribe cheaper drugs for their patients in the long term.

More than 90 percent of U.S. doctors receive free samples, according to the study. However, doctors who discontinued their "sample closets" were three times more likely to prescribe less-expensive generics to uninsured patients.

David Miller, a co-author of the study, said samples encourage doctors to prescribe more expensive, brand-name drugs. Without the samples, "their decision on what drug to prescribe is what's best for the patient," he said.

..... Bulletin Briefs

- ◆ **IRS NOTES:** The IRS has issued some new notices recently:
 - **403(b) plans** now must have a written plan by Dec. 31, 2009 (delayed from Jan. 1, 2009)
 - **Form 5500** return/report for 2008 is now available For more information, please visit: http://www.dol.gov/ebsa/faqs/faq_scheduleC.html.
 - **Mileage** for 2009 will be 55 cents per mile for the optional standard rate.
- ◆ **MAKING UP THE DIFFERENCE:** A new survey by Milliman found that employers pay an additional \$1,115 per year for a family of four's health insurance premium to help doctors and hospitals make up for lower payments from Medicaid and Medicare. That's about \$89 billion annually.
- ◆ **SMOKE OUT:** A new National Business Group on Health study found that tobacco use costs employers \$167.5 billion each year in health expenses and productivity costs. ■



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